

Message Text

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ACTION SCS-03

INFO OCT-01 ARA-06 ISO-00 SCA-01 L-03 H-01 DHA-02
DEAE-00 SNM-02 SSO-00 PA-01 PRS-01 USIE-00 JUSE-00
CIAE-00 INR-07 IO-13 NSAE-00 TRSE-00 NSC-05
OES-06 OMB-01 SS-15 NSCE-00 INRE-00 /068 W
-----211933Z 049632 /44

O 211849Z APR 77 ZDK
FM AMEMBASSY MEXICO
TO SECSTATE WASHDC IMMEDIATE 1684
ALL USCONS MEXICO

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E.O. 11652: N/A
TAGS: CASC, MX
SUBJECT: W/W: ARRESTS: STATEMENT BY ATTORNEY GENERAL
REGARDING POSSESSION FOR USE

REF: STATE 86529

1. PRESS ACCOUNTS APRIL 16 AND 17 REGARDING STATEMENT BY ATTORNEY GENERAL OSCAR FLORES SANCHEZ ON NEW GOM POLICY TOWARD PERSONS ARRESTED WITH SMALL AMOUNTS DRUGS RESULTED FROM INTERVIEW AG GAVE TO CORRESPONDENTS, INCLUDING NYTIMES AND WASHINGTON POST REPRESENTATIVES. SO FAR AS EMBASSY IS AWARE, THERE WAS NO PREPARED STATEMENT AND NO PRESS RELEASE. PERHAPS CONCERNED BY ATTENTION HIS REMARKS HAVE RECEIVED, ATTORNEY GENERAL HAS NOW ASKED THAT EMBASSY AND DEPARTMENT DECLINE ANY COMMENT ON NEW POLICY PENDING ISSUANCE OF OFFICIAL STATEMENT CLARIFYING POLICY (HOPEFULLY WITHIN NEXT FEW DAYS). WE SUGGEST THAT DEPARTMENT RESPOND TO INQUIRIES FROM PRESS AND FAMILIES BY STATING THAT EMBASSY HAS REQUESTED GOM COMMENT ON PRESS REPORTS.

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2. FOLLOWING IS PROVIDED FOR DEPARTMENT'S INFORMATION. AT DEPARTMENT'S DISCRETION, INFORMATION MAY BE PROVIDED CHAIRMAN FASCELL ON A BACKGROUND BASIS, WITH CAUTION AGAINST ANY PUBLIC STATEMENT AT THIS TIME.

3. ATTORNEY GENERAL FLORES HAS INFORMED EMBASSY THAT HE

DOES NOT INTEND TO PRESS CHARGES AGAINST PERSONS ARRESTED WITH SMALL AMOUNTS OF DRUGS INTENDED FOR PERSONAL USE. IF THE CIRCUMSTANCES OF THE ARREST OR OTHER AVAILABLE INFORMATION INDICATE THAT ARRESTEE WAS INVOLVED IN SELLING, TRANSPORTING, SMUGGLING, ETC., THE GOVERNMENT INTENDS TO PRESS CHARGES, REGARDLESS OF THE AMOUNT OF DRUGS INVOLVED. THE ATTORNEY GENERAL HAS SET AS WORKING GUIDELINES THAT CHARGES WILL NOT BE PRESSED IN CASES INVOLVING LESS THAN 100 GRAMS OF MARIJUANA OR LESS THAN 3 (THREE) GRAMS OF COCAINE OR HEROIN. CASES INVOLVING SMALL QUANTITIES OF OTHER DRUGS WILL BE CONSIDERED INDIVIDUALLY, WITH THE DETERMINING PRINCIPLE THAT THE AMOUNT INVOLVED MUST BE SUCH AS WOULD BE REASONABLE FOR AN ADDICT OR REGULAR USER.

4. NEW POLICY IS TO BE APPLIED TO ARRESTS INVOLVING MEXICAN AS WELL AS OTHER NATIONALITIES. IN NEW ARRESTS INVOLVING AMERICAN CITIZENS, THE AG ISSUES ORDERS TO THE AGENTE DEL MINISTERIO PUBLICO NOT TO PRESS CHARGES BUT TO TURN ARRESTEE OVER TO CONSULAR OFFICER FOR ASSISTANCE IN ARRANGING HIS RETURN TO U.S. THUS FAR AG'S OFFICE HAS ORDERED RELEASE OF ABOUT 15 NEWLY-ARRESTED AMERICANS UNDER THIS POLICY. AG ALSO IS HAVING HIS OFFICE DRAW UP A LIST OF PRISONERS AGAINST WHOM FORMAL CHARGES HAVE BEEN FILED, WHO ARE AWAITING COMPLETION OF COURT ACTION ON THEIR CASES. CASES IN THIS CATEGORY WILL BE STUDIED, AND WHERE CASE APPEARS TO FALL WITHIN NEW POLICY, PROSECUTION WILL BE INSTRUCTED TO WITHDRAW CHARGES. EMBASSY HAS NO FIRM ESTIMATE OF THE NUMBER OF PRISONERS WHO NOW LIMITED OFFICIAL USE

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AWAITING SENTENCE WHO MIGHT BENEFIT FROM NEW POLICY, BUT BELIEVE THAT 20 TO 50 CASES MIGHT QUALIFY. WE HAVE RAISED WITH ATTORNEY GENERAL ALSO THE QUESTION OF PRISONERS ALREADY SENTENCED WHOSE CASES INVOLVED SMALL AMOUNTS OF DRUGS. AG SAID THAT THE DECISION ON HOW TO HANDLE SUCH CASES DOES NOT LIE ENTIRELY WITH HIM, AS THEY INVOLVE CASES WHICH HAVE BEEN DETERMINED BY THE COURTS; HOWEVER, HIS OFFICE WILL STUDY THE PROBLEM TO SEE WHAT ACTION MIGHT BE TAKEN.

5. FROM OUR TALKS WITH ATTORNEY GENERAL AND BAEZA WE BELIEVE THAT LEGAL BASIS FOR THE NEW POLICY LIES DISCRETIONARY AUTHORITY OF THE ATTORNEY GENERAL (AND AGENTES DEL MINISTERIO PUBLICO OPERATING UNDER HIS JURISDICTION) TO DETERMINE WHICH CASES ARE SUITABLE FOR PROSECUTION FOR VIOLATION OF FEDERAL LAW. AT PRESENT TIME POLICY IS BEING IMPLEMENTED ON AN AD HOC BASIS, AND WE HAVE NO INDICATION OF INTENTION TO PROPOSE AMENDMENT TO MEXICAN NARCOTICS LAWS TO GIVE LASTING EFFECT TO THE NEW POLICY.

6. DEPARTMENT SHOULD NOTE THAT NEW POLICY IS NOT RPT NOT TO BE APPLIED IN CASES IN WHICH THE CIRCUMSTANCES OF THE CASE INDICATE IMPLICATION IN NARCOTICS TRAFFICKING, ALTHOUGH THE AMOUNT OF THE DRUG ACTUALLY FOUND IS SMALL. FOR EXAMPLE, A CASE IN WHICH RESIDUE OF MARIJUANA WAS FOUND INSIDE AN AIRCRAFT WHICH HAD BEEN MODIFIED TO PERMIT CARRYING OF CARGO, AND WHICH HAD BEEN FOUND ON A CLANDESTINE LANDING STRIP, WOULD PRESUMABLY NOT FIT THE ATTORNEY GENERAL'S CRITERION OF A SMALL AMOUNT OF DRUG INTENDED FOR PERSONAL USE. HAYNE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW, NARCOTICS, ARRESTS
Control Number: n/a
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Sent Date: 21-Apr-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977MEXICO05709
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770139-0214
Format: TEL
From: MEXICO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770434/aaaabctm.tel
Line Count: 127
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 275530a1-c288-dd11-92da-001cc4696bcc
Office: ACTION SCS
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 STATE 86529
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 27-Jun-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2738889
Secure: OPEN
Status: NATIVE
Subject: W/W: ARRESTS: STATEMENT BY ATTORNEY GENERAL REGARDING POSSESSION FOR USE
TAGS: CASC, PGOV, MX
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/275530a1-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009